



California Fair Political Practices Commission

RESCINDED BY
COMMISSION
9/3/98

January 25, 1988

Jennifer Davis
University of California
Student Association
926 J Street, Suite 522
Sacramento, CA 95814

RE: Your Request for Advice
Our File No. A-88-018

Dear Ms. Davis:

You have requested advice regarding the lobbying provisions of the Political Reform Act of 1974.^{1/}

QUESTIONS

1. Is a legislator required to report the cost of a dinner provided by a lobbyist employer?
2. How involved may a lobbyist be in the planning of such a dinner?
3. How involved may a lobbyist be in the distribution of plaques to legislators in association with the dinner?
4. May a lobbyist write letters to legislators inviting them to the dinner?
5. What constitutes a gift?
6. Are plaques given to legislators at a dinner reportable?
7. What qualifies an individual as a lobbyist?
8. Is the individual who supervises a lobbyist, but is not actually involved in direct communication, considered a lobbyist with reporting duties?

^{1/}Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

CONCLUSIONS

1. With certain exceptions, dinners received by public officials are "gifts." Officials must report gifts received from a single donor if the gifts total \$50 or more in a calendar year.

2. If the cost of a legislator attending an event at which he or she is not a speaker, including the meal, drinks and any other items associated with the event, exceeds \$10, a lobbyist may not invite, solicit responses from, or act as designated representative to receive responses from those who accept or decline the invitation. The lobbyist may, however, recommend to the lobbyist employer which legislators are to be invited, and the lobbyist may attend the event, so long as the lobbyist is not the only representative of the employer's organization in attendance.

3. Personalized plaques with an individual value of less than \$250 are excluded from the definition of "gift." Therefore, distribution by the lobbyist of plaques valued at less than \$250 is not prohibited.

4. See Conclusion #2, above.

5. Section 82028 defines "gift" as any payment to the extent that consideration of equal or greater value is not received. It includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status. Exceptions to this definition can be found in Section 82028(b), a copy of which is enclosed.

6. If the lobbyist does arrange for the presentation of plaques, the cost of the plaques must be reported by the lobbyist as an activity expense. The lobbyist employer also must report the cost of the plaques. The legislator need not report a personalized plaque if its value is less than \$250.

7. A lobbyist is an individual who: (1) Is compensated for the purpose of influencing legislative or administrative action, directly or through an agent, and (2) who engages in such activity on a substantial or regular basis. In order to determine whether the activity is "substantial or regular," two "tests" are applied:

The Compensation Test: The person receives or becomes entitled to receive at least \$2,000 in compensation in any calendar month for influencing or attempting to influence legislative or administrative action and engages in any amount of "direct communication," other than administrative testimony, with a qualifying official.

The Contacts Test: The person receives or becomes entitled to receive any amount of compensation for engaging in direct communication, other than administrative testimony, with qualifying officials for the purpose of influencing legislative or administrative action on at least 25 separate occasions in any two consecutive calendar months.

(Regulation 18239, copy enclosed.)

If either of these tests is met, a person is a lobbyist.

8. Based on the above definition, a lobbyist's supervisor who does not engage in any direct communication, including letter writing, does not qualify as a lobbyist. However, if any employee of a lobbyist employer organization spends 10% or more of his or her time on lobbying activities, the pro rata share of salaries directed toward lobbying activities must be reported.

FACTS

Each year the University of California Student Association hosts a Legislative Awards Banquet in conjunction with their Legislative Conference for UC students. The price of the banquet for the student attendees includes the cost of providing dinner for the invited legislators and presenting plaques to two legislators. The plaques are paid for entirely by students' conference registration fees, not by UCSA operating funds.

ANALYSIS

1. Section 87207(a)(1) requires that office holders report the name and address of each source of gifts with an aggregate value of \$50 or more within a calendar year. Section 82028(a) defines "gift," and Section 82028(b) provides exceptions to the definition of "gift." Meals are included in the definition of a gift, unless they are received by an elected state officer, legislative official, agency official, or state candidate at an event at which he or she speaks. (Regulation 18623.)

2. It is unlawful for a lobbyist to arrange for the making of gifts to a legislator, and certain other state officials, aggregating more than \$10 in a calendar month. (Sections 86201 and 86203.) The lobbyist "arranges for the making of a gift" if the lobbyist, either directly or through an agent, does any of the following:

--Delivers a gift to the recipient;

--Acts as the representative of the donor, if the donor is not present at the occasion of a gift;

- Invites or sends an invitation to an intended recipient regarding the occasion of the gift;
- Solicits responses from an intended recipient concerning his or her attendance or nonattendance at the occasion of a gift;
- Is designated as the representative of the donor to receive responses from an intended recipient concerning his or her attendance or nonattendance at the occasion of a gift;
- Acts as an intermediary in connection with the reimbursement of a recipient's expenses.

(Regulation 18624.)

3. Although a lobbyist is prohibited from making or arranging for the making of a gift to a legislator in excess of \$10 in a calendar month, personalized plaques and trophies with an individual value of less than \$250 are excluded from the statutory definition of "gift." (Section 82028(b)(6).) Therefore, assuming the plaque is valued under \$250, a lobbyist is not prohibited from presenting a plaque to a legislator.

4. See Analysis #2, above.

5. See Conclusion #5, above. For specific discussion of the law governing plaques, see Analysis #3, above.

6. Although a personalized plaque worth less than \$250 is not considered a gift, the Act defines an "activity expense" as any expense incurred or payment made by a lobbyist or lobbyist employer which benefits in whole or in part any elective state official, legislative official, agency official, state candidate, or a member of the immediate family of one of these individuals. (Section 86111.)

By giving a plaque to an elected state officer, the lobbyist and lobbyist employer have incurred an activity expense. (Section 86111(a).) All activity expenses must be reported by the lobbyist under Part I of Form 615, if the expense is paid or in any way arranged by the lobbyist. (Section 86113(a)(1).) If the lobbyist does not make or "arrange" a payment which benefits an elected state officer, only the lobbyist employer must report the activity expense. (Section 86116(g).) The lobbyist employer reports the expense in Section C of Form 635 (Activity Expenses).

7. See Conclusion #7, above. (Regulation 18239(b) and (c).)

Davis, Jennifer
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8. Since an individual must engage in direct communication to qualify as a lobbyist, the supervisor described in your letter does not meet either defining test, as listed in Conclusion #7, above. (Regulation 18239(b) and (c).)

If you have additional questions, please contact me at (916) 322-5662.

Sincerely,

Diane M. Griffiths
General Counsel

A handwritten signature in cursive script, reading "Kevin S. Braaten-Moen". The signature is written in dark ink and is positioned above the typed name of the signatory.

By: Kevin S. Braaten-Moen
Political Reform Consultant

Enclosures



University of California Student Association

An Association of University of California Student Governments

Berkeley • Davis • Irvine • Los Angeles • Riverside • San Diego • San Francisco • Santa Barbara • Santa Cruz

TO: FPPC COMMISSION,
FR: JENNIFER DAVIS, ADMINISTRATIVE ASSISTANT
RE: QUESTIONS REGARDING LOBBYIST REPORTING
DATE: DECEMBER 10, 1987

Attached please find a list of questions that the UCSA office has regarding Lobbyist Employer and Lobbyist reporting. These questions arise every year and need clarification. I would like to request that a technician answer these questions in writing so that I may put them on file for future reference. This will ensure that reporting requirements are being adhered to and reports being filed properly. These may also be good questions to consider for the seminar that is being planned.

Thank you for your assistance. If you have any questions, please do not hesitate to call me.

A. Annual Legislative Banquet

Each year the UC Student Association hosts an annual Legislative Awards Banquet in conjunction with their Legislative Conference for UC students. Costs associated with the banquet include dinner for Legislators and plaques, which are paid for entirely by students' conference registration fees and not by UCSA operating funds. All Legislators are invited to attend the banquet to interact with the students. Following is a list of questions related to this banquet.

1. Is the dinner reportable for Legislators that attend?
2. How involved can a lobbyist be in the planning of such a banquet? What about involvement in the distribution of plaques?
3. Can a lobbyist write letters of invitation to Legislators?
4. The \$10.00 gift prohibition can sometimes be confusing. What constitutes a gift? Two Legislators are honored with plaques each year at the banquet, are they reportable?

B. Determining Who Is A Lobbyist

1. What is the formula for determining who is and is not a lobbyist?
2. Is an individual who does little or no lobbying but who is an administrator and has direct supervision of a lobbyist considered a lobbyist? If yes, does that person report issues, bills etc...they supervised lobbying on?



California Fair Political Practices Commission

January 11, 1988

Jennifer Davis
Administrative Assistant
University of California
Student Association
926 J Street, Suite 522
Sacramento, CA 95814

Re: 88-018

Dear Ms. Davis:

Your letter requesting advice under the Political Reform Act was received on January 4, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5662.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to the information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Jeanne Pritchard
Jeanne Pritchard
Chief
Technical Assistance and Analysis
Division

JP:plh



University of California Student Association

An Association of University of California Student Governments

Berkeley • Davis • Irvine • Los Angeles • Riverside • San Diego • San Francisco • Santa Barbara • Santa Cruz

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A-88-018

M e m o r a n d u m

To : Jeanne Pritchard
Division Chief

Date : December 17, 1987

From : FAIR POLITICAL PRACTICES COMMISSION
John H. Larson, Chairman *John*

Subject: Lobbyist Reporting

Attached is a letter from the University of California Student Association regarding lobbyist reporting. Would you please do whatever is necessary.

Thank you.

Attachment